

Remarks

I. The Claims

Upon entry of the foregoing amendment, claims 3-6, 8 and 10-20 are pending in the application, with claims 3, 9, 11-15 and 20 being the independent claims. Claims 4, 5, 10, 13, 14 and 20 are sought to be amended. Claim 9 is sought to be cancelled. No new matter is added by way of these amendments. It is respectfully requested that the amendments be entered and considered.

Support for the amendment of claim 10 can be found, *e.g.*, on page 4, lines 16-18; page 18, lines 21-28; and original claim 10.

II. Claim 4 Is In Proper Dependent Form

The Examiner objects to claim 4 “under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.” (Office Action, page 2.) Applicants respectfully disagree.

Solely to advance prosecution, and not in acquiescence to the Examiner’s rejection, Applicants have amended claim 4 as suggested by the Examiner (on page 2 of the Office Action) to recite “*further comprising*”. Therefore, the rejection is rendered moot.

For the record Applicants believe the rejection of claim 4 to be improper. Claim 4 recites “[t]he mutant VSV according to claim 3” and according to claim 3 the “mutant VSV has the mutation $\Delta M51$ ”. Therefore, claim 4 requires the mutation $\Delta M51$ and further limits the subject matter of claim 3.

In view of the above, Applicants respectfully request the Examiner to reconsider and withdraw the objection of claim 4 under 37 C.F.R. § 1.75(c).

III. The Claimed Invention is Not Obvious

A. Claims 3-5, 9-15 and 20

“Claims 3-5, 9-15 and 20 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Whitt et al US2005/0260601”. (Office Action, page 2.) Applicants respectfully disagree.

To advance prosecution and not in acquiescence to the Examiner’s rejection Applicants provide herewith a Declaration under 37 C.F.R. § 1.131. As a result, Whitt *et al.* is not prior art with regards to Applicant’s claimed invention.

The Whitt *et al.* priority document was filed on September 9, 2002. The Declaration and accompanying Exhibit 1 show that the inventors conceived and reduced to practice the claimed invention before September 9, 2002. As a result, Whitt *et al.* is not prior art with regards to Applicants’ claimed invention.

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the rejection of the claims 3-5, 9-15 and 20 under 35 U.S.C. § 103(a).

B. Claims 4-6 and 8

“Claims 4-6, 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitt et al US2005/0260601 as applied to claim 3 above, and further in view of Desforges et al (Virus Research 76:87-102, 2001, cited in IDS)”. (Office Action, page 4.) Applicants respectfully disagree.

As discussed above, Whitt *et al.* is not prior art to Applicants’ claimed invention.

Applicants respectfully request the Examiner to reconsider and withdraw the rejection of claims 4-6 and 8 under 35 U.S.C. § 103(a).

Conclusion

It is not believed that extensions of time are required beyond those that may otherwise be provided for herein or in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, The United States Patent and Trademark Office is hereby authorized to charge any fee deficiency required to prevent abandonment of the current application or credit any overpayment to Deposit Account 50-1677.

Applicants believe that a full and complete Reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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